

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40335
Docket No. MW-40220
10-3-NRAB-00003-070449
(07-3-449)**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier changed the work schedule of the employees on System Cat Gang 9153 from T2 (compressed second half) to T1 (compressed first half) effective May 1, 2006 (System File 1456478 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Harris, O. Batiste, H. Dixon, D. Brumley, M. Martin, M. Hardy, K. Coutee, H. Curley, R. Oliver, J. Ben, M. Joiner and M. Oliver, III shall now each be compensated for eighty-eight (88) hours at their respective time and one-half rates of pay beginning May 1 through 8, 2006.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization filed the instant claim on the Claimants' behalf, alleging that the Carrier violated the parties' Agreement when it changed the work schedule on System Cat Gang 9153 from a T2 (compressed second half) to a T1 (compressed first half) schedule effective May 1, 2006.

The Organization initially contends that the Carrier violated the September 1, 2003 Memorandum of Agreement (MOA) in at least three ways. It asserts that Section 5(d) of the MOA provides that employees will be notified at least 15 working days in advance of any change to a gang's alternate work schedule. The Organization points out that prior Awards have confirmed that such mandatory provisions must be upheld to ensure the integrity of the Agreement and the rights of the entire class of employees covered thereby. It maintains that Gang 9152 was notified by the Carrier of the compulsory work schedule change on April 11, and this change took effect on May 1, 2006. The Organization argues that the Carrier failed to comply with this requirement when it gave Gang 9153 only 12 working days' notice of the change at issue.

In addition to receiving only 12 working days' notice of this change, the Organization maintains that the members of Gang 9153 also were not given the opportunity to vote on a particular schedule that would be beneficial to them. It contends that Section 5(d) of the MOA specifies that a work schedule change will not be implemented without the written concurrence of the employees involved and the General Chairman. The Organization emphasizes that the Carrier never disputed that a copy of the notice of the work schedule change was not provided to the General Chairman, and the change was implemented without the General Chairman's written concurrence. Moreover, the Carrier never refuted the fact that the Claimants were not allowed to vote on this change. Citing several Awards, the Organization contends that these unrefuted statements must be accepted as fact, demonstrating that the Carrier simply informed the Claimants that the change would be implemented and that the Claimants were not afforded the opportunity to approve or disapprove the work schedule change.

The Organization asserts that based on these circumstances, there can be no doubt that the Carrier violated the Agreement by failing to provide Gang 9153 with proper notice of the work schedule change, by implementing the change without the employees' written concurrence, by failing to provide the General Chairman with a copy of the notice of the change, and by implementing the change without the written concurrence of the General Chairman.

Addressing the Carrier's assertion that the members of Gang 9153 were given 30 days' notice of the schedule change, the Organization insists that there is no probative evidence that the Claimants were provided with the required minimum 15 working days' advance notice. Moreover, as to the "blanket notice" reportedly provided by Supervisor Crook, the Organization points to prior Awards in asserting that the MOA requires specific and detailed written notice at least 15 working days in advance.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier initially contends that it gave 30 to 45 days' notice of the schedule change to all Claimants. The Carrier asserts that Manager Crook's statement was specific and provided that Gang 9153 would be moving to a T-1 schedule as allowed by Section 5(d). The Carrier argues that this information was provided to the Organization on the property, and the Organization never disputed it during the on-property handling. The Carrier points out that the Organization never provided any first-hand statements from the Claimants, nor did the General Chairman attempt to deny Crooks' statement. Citing prior Awards, the Carrier emphasizes that this unrefuted information stands as fact.

The Carrier further argues the Organization failed to meet its burden of establishing that the Agreement was violated. It submits that mere citation of a Rule does not prove that a violation occurred. Pointing to several Awards, the Carrier argues that because the Organization failed to meet its burden of proof, the instant claim should be denied. The Carrier further argues that the Board is not empowered to reconcile a dispute where, as here, the Organization did not refute a first-hand statement introduced by the Carrier.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Board finds that the Organization proved that the Carrier violated the Agreement when it changed the work schedules on System Cat Gang 9153 from T2 to T1 and failed to comply with the terms of the MOA.

The MOS states in Section 5:

“(a) If agreeable with the manager and a majority of employees assigned to a gang where a restricted position is assigned or the employee assigned to a restricted position working independently, such gang or independent position may work either a compressed work half or a consecutive work half. A compressed work half will not exceed eight days. A compressed work half may begin on the first, eighth, sixteenth, or twenty-third of each month. A copy of the written vote of the members of the gang or employee will be provided the General Chairmen.

* * *

(d) If Carrier wishes to work an alternate work schedule other than as provided in Sections 4 and 5(a) above, affected employees will be notified at least fifteen (15) working days in advance of the proposed change, with a copy of the notice provided to the General Chairmen. Upon written concurrence of the employees involved and the General Chairmen, the alternative schedule may be implemented. Such alternative schedules will be implemented on the first of the month and will have consecutive rest days.”

The record reveals that the Carrier did give some vague notice to the employees of the change in the work schedule, but it is not clear that the notice was given at least 15 working days in advance of the proposed change. The Carrier points to a “blanket notice” that was given to the employees, but it is not clear that that blanket notice was issued more than 15 working days in advance of the change.

In the case record, there is an undated memo to S. M. North which is entitled, "A Response to Claim No. M6-MOP063." That statement reads, in part:

"The statement by the Organization is false and not true concerning the notification. The employees in question had been instructed and fully aware that as the tie gang schedule moved to the Palestine sub division, the Gang in question 9153 would move to that current schedule of T1. There had been several times prior to the changing from T2 to T1 schedule that the gang in question was updated on a regular basis. At least thirty to forty-five days before any schedule change. Further, there was never any time that any employee on this particular gang expressed any dissatisfaction with myself about this schedule change. Further, the foreman Harris was updated on a regular basis of when any schedule change would happen. This claim should be denied in its entirety."

That statement by the Carrier representative, that appears to be J. W. Crook, does not clearly state when the notice was given. Moreover, and in further violation of the MOA, there is no showing that there was a written concurrence of the employees involved, nor is there a showing that the General Chairman was given a copy of the written vote of the members of the gang. All of those things are required by the clear language of the MOA.

It is simply not enough for the Carrier to informally inform the employees that there might be a possible change at some point in the future. There is a requirement of a vote, and a further requirement that the results of that vote be turned over to the General Chairman. The Carrier failed to comply with those elements of the Rule.

For all of the above reasons, the claim must be sustained.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 1st day of March 2010.